

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Docket No. 54258

Plaintiff,

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC.,
CHURCH OF SCIENTOLOGY OF BOSTON, INC.,
KEVIN TIGHE,
ROBERT JOHNSON, and
DAVID ADEN,

Defendants.

AFFIDAVIT

AFFIDAVIT OF ERIC D. BLUMENSON, ESQ.
IN OPPOSITION TO PLAINTIFF'S MOTION
TO DISMISS WITHOUT PREJUDICE

ERIC D. BLUMENSON, being first duly sworn, deposes and
says:

1. I am a member of the bar of this Commonwealth, and I am counsel for the Church of Scientology of Boston, Inc., in this case.

2. In this affidavit I detail facts demonstrating that it would be a substantial injustice to the defendants to dismiss this case without prejudice. These facts relate to (a) the age and history of the case, (b) the absence of any

legitimate reason for seeking to litigate this case at a future time, and (c) plaintiff's conduct in this case to date.

3. On or about April 9, 1982, plaintiff commenced this action naming as defendants the Church of Scientology of California, Inc. (hereinafter the "Church of California"), the Church of Scientology of Boston, Inc. (hereinafter the "Church of Boston"), Kevin Tighe, Robert Johnson and David Aden.* The complaint alleged that the defendants conspired to, and did, without authorization from plaintiff, take documents from plaintiff's office and from a dumpster adjacent to plaintiff's office, and used these documents to file frivolous bar complaints against plaintiff (Complaint, ¶ 12), to defame and "misrepresent" plaintiff (id.), to contact plaintiff's clients to make threats, false representations, and "sabotage" plaintiff's practice of law. (Complaint, ¶ 13) and to intimidate and harass witnesses in 11 named actions (Complaint, ¶ 14). Plaintiff alleged five causes of actions: conversion, invasion of right of privacy, unfair and deceptive trade practices and two counts seeking return of the documents.

*

The docket of proceedings is attached hereto as Exhibit A.

Plaintiffs sought, at the same time as he began this action a temporary restraining order ordering

defendants, their counsel, agents servants and anyone acting in concert with them or anyone else in actual or constructive notice of such Restraining Order, to redeliver to plaintiff [all the documents]

Plaintiff also sought a Preliminary Injunction

restraining the defendants, their agents, servants and anyone acting in concert with them or anyone else in actual or constructive notice of such order from copying, distributing, transferring, modifying, disseminating, destroying or in any way using or disclosing the contents of any of the documents, materials or other writings. . .

and

ordering the defendants, their counsel, their agents, servants and anyone acting in concert with them or anyone else in actual or constructive notice of such order, to redeliver all documents, materials and other writings. . . .

Finally, plaintiff sought to recover his actual damages caused by defendants' acts and either double or treble damages, along with attorneys' fees, interest and costs.

Thereafter, the Church of Boston, Tighe, Johnson and Aden opposed plaintiff's motion for a temporary restraining order and submitted in opposition the affidavit of Nancy Gertner, supported by voluminous exhibits. The opposition demonstrated that plaintiff could neither show a likelihood of success on the merits nor that plaintiff would be irreparably harmed.

Plaintiff filed a Memorandum In Support of Application For Injunctive Relief arguing, in essence, the merits of his action, attached hereto as Exhibit "B". Plaintiff also filed six affidavits and numerous other papers addressing the legal and factual issues in this action.

On April 15, 1982, this Court denied plaintiff's application for a preliminary injunction. Thereafter, on April 16, 1982, plaintiff filed a Petition for Interlocutory Review of the April 15 order. On April 16, 1982, after argument, plaintiff's petition was denied by Honorable Rose, J.

Meanwhile on April 14, 1982, the Church of California moved, pursuant to Rule 12, Mass. R. Civ. Pro., to dismiss the complaint on the grounds of insufficient service of process and failure to state a claim upon which relief can be granted. In support of its motion, the Church of California submitted three affidavits. Plaintiff opposed the motion, relying upon material outside the record, including affidavits and hearing transcripts in other actions.

On May 10, 1982, the Church of Boston, and the individual defendants answered the complaint asserting three affirmative defenses.

On August 29, 1983, plaintiff filed a purported notice of voluntary dismissal against the Church of Scientology of California, Inc.

4. On September 16, 1983 I sent Mr. Flynn a notice of the taking of his deposition (Exhibit "C"), setting

September 29 as the deposition date. Given a previous history of discovery problems with Mr. Flynn, I also sent a letter requesting that if September 29 were inconvenient, plaintiff's counsel notify me as soon as possible of other dates "close to September 29" which I might agree to so as to expedite the completion of this deposition (Exhibit "D"). Having heard nothing for 11 days, I called plaintiff's attorney, David Banash. He informed me that Mr. Flynn would not appear on the scheduled date, and that although plaintiff was available on several individual days in October, he would not agree to appear until November 21 unless I guaranteed the deposition would be completed in one day. I did not guarantee this but offered to have the first day in October, and offered that if there were any second day it could be on a day of Mr. Flynn's choosing in November. This proposal was rejected by the plaintiff.

On the scheduled day for deposition, September 29, 1983, Attorney Banash appeared in court with a motion for a protective order. This motion was denied by Judge Pierce. I simultaneously presented a motion to compel, on which no action was taken because the protective order was denied.

5. I believe that Attorney Flynn's refusal to submit to deposition was unreasonable, and his motion for a protective order groundless, for the following reasons:

(a) The attached court order (Exhibit "E") shows that the Armstrong case was scheduled for a hearing on September 30, not September 29 (the deposition day) as claimed by the plaintiff in his affidavit.

(b) The morning of the hearing I informed Mr. Banash that I understood the Armstrong case had been postponed until mid-October. The reason presented to the court for a protective order was then changed: Attorney Banash acknowledged that Armstrong had been postponed, and argued that Attorney Flynn was required in a Suffolk superior court trial on October 3, a wholly inadequate reason for refusing to appear in deposition on September 29.

(c) I indicated on September 16 my willingness to agree to an alternative, more convenient date. No effort was made by Attorney Flynn or his counsel to seek agreement from me. Rather, Mr. Flynn waited until the day of deposition to file a protective order. Further, Mr. Banash conceded that several dates were available for deposition which he would not agree to.

(d) Judge Pierce stated at the hearing that waiting until the day of deposition to seek a protective order was unreasonable conduct.

(e) The "grounds", such as they were, were fully known during the approximately two weeks between notice and deposition date.

(f) The groundlessness of plaintiff's motion is further demonstrated by his subsequent conduct that afternoon. Rather than appear in deposition, as ordered, plaintiff moved to dismiss his suit. I believe that a reasonable conclusion is that the motion for a protective order was motivated solely by a desire not to appear in deposition.

6. This case was filed one and one half years ago, on April 9, 1982. That fact alone led Judge Pierce, who was presented on September 29 with the motion to dismiss but did not act on it, to declare that "the question is whether it is or is not with prejudice. That is the question that confronts me. If it's a year a half old, I may have a little difficulty with the absence of prejudice. . . ." (Excerpts from hearing transcript, attached hereto as Exhibit "F".)

7. To date, plaintiff has submitted no reason to me, on or off the record, as to why his allegations should be litigated in a different forum. Indeed, such a course would result in a less reliable adjudication by allowing Mr. Flynn to "forum shop"^{1/} and shield his allegations and witnesses from immediate discovery.^{2/} It also would leave the defendant with considerable expenses, including extensive litigation on the preliminary injunction in both Superior Court and the Appeals Court, without even a final resolution to show for it.

8. If plaintiff's motion is allowed, the defendants' names will remain tarnished by serious allegations of wrongdoing with no opportunity to challenge or question them. In Michael Flynn v. L. Ron Hubbard, (United States District Court, D. Mass. CA No. 83-2642-C) plaintiff repeats almost the identical allegations in Federal Court but these defendants will not be able to confront them because the only party defendant named is the Founder of the Church, from whom Mr. Flynn candidly admitted he hopes to obtain a default judgment.

9. While a dismissal without prejudice serves

^{1/} Mr. Flynn has already lost two preliminary adjudications of the merits of this case when his motions for a preliminary injunction and for interlocutory review were denied.

^{2/} As noted below, Mr. Flynn moved to dismiss on the day of his deposition, after having lost a motion for a protective order.

legitimate purposes in some cases, in others it provides a powerful, harassing, "hit and run" technique to a plaintiff who can inflict considerable burdens on a defendant and then move on to another court without ever being held accountable for his allegations. Therefore, Rule 41(a) does not automatically allow a voluntary dismissal after an answer has been filed, but requires the Court to determine whether a dismissal without prejudice would be just.

Abundant evidence exists to show that the case at bar was filed not to obtain redress of a valid claim through litigation, but rather to cause economic and other hardship to Church.

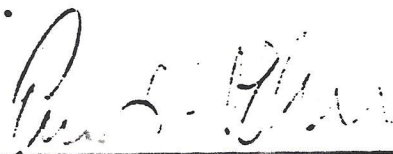
10. The motion to dismiss the instant case was filed on precisely the day plaintiff would otherwise have had to appear in deposition, just after his motion for a protective order was denied. I believe a fair inference arises that the motion to dismiss was a last resort, to be used only if Mr. Flynn could not keep the case alive without having to document his allegations.

11. In this and his other cases, Mr. Flynn has consistently burdened the Church with expensive and needless court proceedings. The events revolving around September 29, 1983, when Mr. Flynn filed this motion rather than be deposed, are a good example. The Church was required to expend some eight hundred dollars simply to obtain plaintiff's deposition (then stayed because of the motion to dismiss),

after Mr. Flynn refused to either appear on his scheduled date or agree to a reasonable new date.

12. Neither the circumvention of discovery nor the desire to obtain a judgment in another forum without having to prove factual allegations constitutes a legitimate reason to dismiss a pending action without prejudice. Since the plaintiff has not suggested any proper justification for the relief he seeks, his motion to dismiss this action without prejudice should be denied.

Signed and sworn under the pains and penalties of perjury this 11th day of October, 1983.


Eric D. Blumenson, Esq.

Exhibits "A" through "E" attached.

Exhibits to the Affidavit
of Eric D. Blumenson, Esq.,
in Opposition to Plaintiff's
Motion to Dismiss without
Prejudice

- Exhibit "A": Docket of Michael J. Flynn v. Church of Scientology of California, Inc., et al.
- Exhibit "B": Memorandum in Support of Plaintiff's Motion For Injunctive Relief, filed April 14, 1982.
- Exhibit "C": Defendant Church of Scientology of Boston's "Notice of Taking Deposition of Michael J. Flynn," filed on September 16, 1983.
- Exhibit "D": Letter of Eric D. Blumenson, Esq., to plaintiff's counsel, dated September 16, 1983.
- Exhibit "E": "Order" of Hon. John Cole scheduling hearing in Church of Scientology of California, Inc. v. Gerald Armstrong, et al.
- Exhibit "F": Excerpt from the transcript of hearing before Hon. Rudolph Pierce in Michael J. Flynn v. Church of Scientology of California, Inc., et al.